

(19) (20)

HIGH COURT OF JUDICATURE CHHATTISGARH:
BILASPUR

Hon'ble Shri Vijay Kumar Shrivastava, J

M.A. No. 1174 of 2003

Appellant:
(CLAIMANT)

Devendra Kumar Yadu
S/o. Late Girdhar Yadu,
Aged about 32 years,
R/o. Old Bust stand, Dalli Rajhara, Distt.
Durg (C.G.)

Versus

Respondents :
(DEPENDENTS)

1. Bansilal, Aged about 32 years,
S/o. Janaklal,
R/o. Old Bus Stand, Dalli Rajhara,
Tehsil, Baloda, District Durg (C.G.)
2. Santosh Kumar, S/o. Barkaram, Aged
about years, R/o. New Market Dalli
Rajhara, Distt. Durg (C.G.) (Vehicle
Owner.
3. Branch Manager, National Insurance
Company Limited, Gill Complex,
Gurudwara Road, Durg (C.G.)

Present :- Shri V.K. Sharma, counsel for the appellant.

None for respondent No.1 & 2.

Shri S. Das, Dy. Manager, for the Insurance Company along
with Shri Anand Gupta counsel for respondent No.3.

ORAL ORDER

(Dated 16th January, 2007)

The following order of the Court was delivered by Vijay Kumar
Shrivastava, J:

Being aggrieved by the award dated 09.09.2003 passed by Motor
Accident Claims Tribunal Rajnandgaon (henceforth "the Tribunal") in
Claim Case No.165/2002 whereby compensation claimed by the appellant

has been dismissed, this appeal under Section 173 of the Motor Vehicle Act, 1988 (henceforth "the Act").

(2) On 24.05.2002 appellant by Car No.MP24C/4201 (Current No.CG 07ZD/1782) was going to village Anda. The car was owned by respondent No.2 and was insured with respondent No.3 and was driven by respondent No.1. A truck was going ahead the car. When they reached near National Dhaba at village Tedesara, all of a sudden Truck driver applied brake and stopped his vehicle, respondent No.1 who was driving the car instead of stopping the car, dashed it with the back portion of the truck, resultantly appellant sustained serious injuries. Police after due investigation prosecuted respondent No.1 for rash and negligent driving. Appellant assessed compensation to the tune of Rs.1,38,000/- and filed application u/s 166 of the Act for compensation award.

(3) Respondents contested the claim. Respondent No.1 although admitted his prosecution for rash and negligent driving and also admitted that he confessed his guilt and that was accepted by the Criminal Court, yet, here pleaded that the accident took place due to the negligence of Truck driver. Respondents 2 and 3 also pleaded that for accident Truck driver who was negligent is responsible. Respondent No.3 also pleaded that the respondent No.1 was not holding license to drive the vehicle, as such for breach of policy they are not liable to pay compensation.

(4) Learned Tribunal after appreciation of evidence although held that on account of accident the appellant suffered loss to the tune of Rs.21,990/- but did not award the same against respondent on the ground that for accident respondent No.1 was not responsible as the accident took place because of the negligence of Truck driver.

(5) Devendra Kumar-PWI, in his evidence deposed that he was traveling in a car that was driven by Bansilal – respondent No.1, one truck

was going ahead of it was suddenly stopped. The car driven by Bansilal entered beneath the truck and met with an accident. From his cross-examination, it is also evident that the car dashed the back of the truck. Level of prudence is expected from driver Bansilal to have kept a proper distance to avoid such accident by cautiously applying brakes, but respondent No.1 instead applying the brakes to avoid accident, dashed the car in back portion of the Truck. Undisputedly accident took place, even respondent No.1 confessed his guilt before the Criminal Court, and in such circumstance non-appearance of respondent No.1 in witness box to prove his innocence, compels Courts to draw adverse inference against him. The Truck driver cannot be blamed for the accident as he was going ahead the car in usual way and it appears that in exigency he was compelled to apply brake and stop his vehicle. Learned Tribunal did not care to consider all the above facts and utterly failed to appreciate the evidence, resultantly gave an incorrect finding. Therefore it is held that respondent No.1 on 24.05.2002 drove the vehicle bearing registration No.MP.24C/4201 in a rash and negligent manner and met with the accident wherein appellant sustained injuries.

(6) Learned Tribunal assessed the compensation i.e. Rs.21,990/- and assessment made by the Tribunal has not been challenged by any of the parties during the course of arguments. So far as the liability of the insurance company is concerned, the insurance company did not dispute that the vehicle M.P.24C/4201 is not insured with them and persons traveling in that vehicle, in case of negligent driving of its driver if the vehicle met with accident were not entitled for compensation with the owner as well as the insurer.

(7) In the result, appeal succeeds, respondents jointly and severally shall pay to the appellant Rs.21,990/- (Rupees Twenty One Thousand Nine Hundred and Ninety Only) towards compensation and also pay

interest @ 6% from 18.06.2002 till realization and shall also pay

Rs.2,000/- towards cost.

Sd/-
V.K.Shrivastava
Judge